SODA FLAT CO., INC.

IBLA 83-381 Decided September 2, 1983

Appeal from decision of the California State Office, Bureau of Land Management, rejecting application for recordable disclaimer. CA 4238.

Affirmed.

1. Act of Apr. 28, 1930--Act of July 6, 1960-- Conveyances: Generally--Lieu Selections

An application for a recordable disclaimer or a quitclaim deed of the Government's interest in a parcel of land in the Inyo National Forest under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance in 1900 to the United States of the parcel in anticipation of making a lieu selection under the Act of June 4, 1897, is properly rejected even though the lieu selection was never completed, because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose and provides that title to the lands was quieted to the United States in 1961 as part of the national forest in which the lands are located.

2. Act of July 6, 1960--Federal Land Policy and Management Act of 1976: Conveyances--Federal Land Policy and Management Act of 1976: Disclaimers of Interest--Lieu Selections

The Federal Land Policy and Management Act of 1976 did not repeal the Act of July 6, 1960. Therefore, the provisions of the former do not provide authority to grant a disclaimer where doing so is contrary to the provisions of the latter. Further, the Federal Land Policy and Management Act of 1976 requires consultation with any affected agency prior to issuing a disclaimer. Where the Forest Service, which controls the surface of the affected lands within a national forest, expresses strong opposition to issuing a disclaimer, BLM's refusal to exercise the discretionary authority to do so is proper.

3. Act of Apr. 28, 1930--Act of July 6, 1960-- Conveyances: Generally--Lieu Selections--Statutory Construction: Legislative History

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

APPEARANCES: James R. Parker, Jr., Esq., Bakersfield, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Soda Flat Co., Inc. (Soda Flat), appeals the December 7, 1982, decision of the California State Office, Bureau of Land Management (BLM), rejecting its application for a recordable disclaimer. We affirm.

On March 29, 1977, Soda Flat applied to BLM for a "document of disclaimer from the United States" under section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1745 (1976). It asked that the Department, on behalf of the United States, disclaim any interest in the S 1/2 SE 1/4 sec. 36, T. 19 S., R. 33 E., Mount Diablo meridian, in the Inyo National Forest, Tulare County, California. On October 11, 1982, while the application for a disclaimer under FLPMA was pending, Soda Flat filed a request that BLM consider its application to be filed pursuant to the authority of section 6 of the Act of April 28, 1930, 46 Stat. 257, as well.

Soda Flat's interest in this parcel (the base lands) may be traced back to C. E. Glover, who, on October 2, 1900, purchased it from the State of California. On October 12, 1900, Glover deeded all of her interest therein to the United States so that it could be included in the Sierra Forest Reservation. She made the transfer in anticipation of selecting another parcel in lieu of the base lands, pursuant to the Act of June 4, 1897, 30 Stat. 11, 36.

In December 1900, Glover filed application No. 3516 (Sacramento 05424) for a parcel in lieu of the base lands that she had deeded to the United States. However, on November 10, 1915, the Commissioner of the General Land Office (GLO) rejected Glover's lieu selection application, evidently because he had concluded that she did not have good title to the base lands. 1/

1/ We find nothing in BLM's files explaining why Glover's application for lieu selection was rejected. Soda Flat's statement of reasons indicates that GLO concluded that Glover did not have good title to the base lands. If so, Soda Flat's present claim to title to these lands is also doubtful, since it is Glover's direct successor in interest.

On February 7, 1919, the McCloud River Lumber Company (McCloud River), Glover's eventual successor to whatever interest she had in the parcel, 2/ filed a request with the Commissioner, GLO, for a disclaimer of the Government's interest in the base lands. On May 12, 1919, the Commissioner responded "that as the selection was canceled November 10, 1915, the United States by such cancellation refused to accept title to said base lands and does not now claim any right, title or interest" in them. This apparent disclaimer was subsequently recorded in the Tulare County records.

Soda Flat, by a succession of transfers, took whatever interest C. E. Glover had in this parcel by grant deed on February 19, 1968, and subsequently filed its application for disclaimer under section 315 of FLPMA in 1977 and for a quitclaim under section 6 of the Act of April 28, 1930, in 1982. In support of this application, it argued that it had relied on the Commissioner's statement in 1919 that the Government had not accepted Glover's relinquishment of title. It noted that it had paid all general and special taxes on the property since it acquired it.

On December 7, 1982, BLM rejected Soda Flat's application, holding that title to the base lands was quieted to the United States under the Act of July 6, 1960, 74 Stat. 334 (the Sisk Act). BLM held that section 3 of this Act had removed the Department's authority to relinquish title to the lands, and that section 4 thereof had incorporated them into the Inyo National Forest in July 1961, upon the failure of any interested party to demand payment of compensation for the lands, as provided in section 1 of the Act. BLM's decision did not specifically address Soda Flat's application under FLPMA. Soda Flat (appellant) appealed.

[1] BLM correctly held that it was barred by the Sisk Act from issuing a disclaimer of the Government's interest in the base lands under section 6 of the Act of April 28, 1930, supra. In Masonic Homes of California, 70 IBLA 46 (1983), and Masonic Homes of California (Masonic I), 4 IBLA 23, 78 I.D. 312 (1971), we held that the Sisk Act repealed any authority for the Department to reconvey any interests held by the United States on account of any deed issued to it pursuant to the Act of June 4, 1897, supra, in contemplation of receipt of a lieu selection, even though the selection was never completed. Section 3 of the Sisk Act expressly provides that no reconveyance can be made under section 6 of the Act of April 28, 1930, supra, of any lands relinquished or conveyed to the United States as a basis for a lieu selection after July 6, 1960, the effective date of the Sisk Act.

The reasons for the decision by Congress in 1960 to terminate the rights of holders of interests in parcels deeded to the United States under the Act of June 4, 1897, supra, are set out fully in S. Rep. No. 1639, 86th Cong.,

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2/ A copy of the deed from Glover to McCloud River, filed with Soda Flat's statement of reasons, shows that the interest was not transferred until July 11, 1919, 4 months after McCloud River filed its first request. McCloud River may have filed two requests for disclaimers, since the Commissioner's letter refers to one dated May 2, 1919.

2d Sess. (1960), reprinted in 1960 U.S. Code Cong. & Ad. News 2743-55, in connection with H.R. 9142, which culminated in the Sisk Act. The legislative history fully discusses the background to the problem of incomplete lieu selections:

> The 1897 act provided that--
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> > in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent * * *.
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> This act * * * was repealed by the act of March 3, 1905 (33 Stat. 1264). The last-named act saved, however--
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> > the validity of contracts entered into by the Secretary of the Interior prior to the passage of this Act.
>
> and provided, further, that--
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> > selections heretofore made in lieu of lands relinquished to the United States may be perfected and and patents issue therefor the same as though this Act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid another selection for a like quantity of land may be made in lieu thereof.

Id. at 2744-45. Thus, the repeal of the 1897 Lieu Selection Act in 1905 preserved the right to make lieu selections where a party had relinquished title to base lands, but did not provide for the reconveyance of the base lands to the party.

The legislative history continues:

> None of these acts contained any provision for reconveyance of the relinquished lands and the 1905 act, as is evident, treated the conveyor's rights as contractual rather than proprietary in nature. It was not until the act of September 22, 1922 (42 Stat. 1017), became law that there was authority for the Secretary of the Interior to make a reconveyance * * *. [Emphasis supplied.]

Id. at 2745. Against this background, it is evident that there was no authority for the putative disclaimer in 1919 by the Commissioner of GLO, and it was therefore void. There is no basis for appellant's assertion that the Government is estopped by the "disclaimer" from asserting title to the land in question. Appellant has not established any affirmative misrepresentation or affirmative concealment of a material fact. See United States v. Ruby Co., 588 F.2d 697, 703-04 (9th Cir. 1978).

The authority to grant reconveyances contained in the Act of September 22, 1922, expired on September 22, 1927, but the Act of April 28, 1930, supra, subsequently renewed the Department's authority. Section 6 of the 1930 Act provides as follows:

> Where a conveyance of land has been made * * * to the United States in connection with an application for * * * an exchange of lands * * *, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Commissioner of the General Land Office [now the Bureau of Land Management] is hereby authorized and directed, if the deed of conveyance has been recorded, to execute a quitclaim deed of the conveyed land to the party or parties entitled thereto.

The legislative history leaves no doubt that Congress intended in 1960 by the Sisk Act to repeal the Act of April 30, 1930, and so to strip the Department of any authority to reconvey base lands in these circumstances:

> PURPOSE
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> The principal purposes of H.R. 9142 are (1) to provide compensation for land conveyed or relinquished to the United States during the years 1897-1905 under the act of June 4, 1897 (30 Stat. 11, 36), in cases in which the lieu lands or other rights which the owners were entitled to receive under this 1897 act and supplementary legislation have not already been given them; (2) to make inapplicable to the owners, their heirs and assigns a later provision of law [sec. 6 of the Act of April 28, 1930] directing the Secretary of the Interior, upon request, to return the original lands; and (3) thus to correct defects in the law under which such parties are now laying claim to valuable lands within the national forests and parks and taking them out of Federal ownership.
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> * * * * * * *
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> In view of the earlier legislation, the 1922 and 1930 acts must, at least so far as reconveyances are concerned, be regarded as acts of grace on the part of Congress which vested no permanent or irrevocable right to a reconveyance in their beneficiaries. Enactment of H.R. 9142 will thus, in effect, restore the legal situation to what it was before these acts became law except as to lands which have been returned to private ownership in the meantime. [Emphasis supplied.]

S. Rep. No. 1639, supra at 2743-45. In 1960, prior to the passage of the Sisk Act, the Acting Secretary of the Interior reported to Congress his understanding that "H.R. 9142 would repeal the 1922 act and direct that there be no more reconveyances under section 6 of the 1930 act." (Emphasis supplied.) Letter from Acting Secretary Ernst to Hon. Wayne Aspinall

(Jan. 27, 1960), reprinted in 1960 U.S. Code Cong. & Ad. News 2751; accord, Udall v. Battle Mountain Co., 385 F.2d 90, 96 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968).

BLM's holding that title to these base lands was "quieted to the United States" under the Sisk Act is also supported by the legislative history and the terms of the Act itself. In 1959, the Acting Secretary of Agriculture expressed his wish that

> title to these lands should be confirmed to the United States, with provision for such compensation to the grantors or their successors in interest as Congress finds equitable. We recommend that a provision be added to the bill to specify that the lands shall be part of the national forests * * * within which they are located. [Emphasis supplied.]

Letter from Acting Secretary Morse to Hon. Wayne Aspinall (Oct. 14, 1959), reprinted in 1960 U.S. Code Cong. & Ad. News 2749. Section 4 of the Sisk Act expressly provides that, upon failure of the owners to make demand for reimbursement within 1 year from July 6, 1960, the base lands "shall * * * be a part of the national forest * * * within the boundaries of which it is embraced [and] shall be administered as a part thereof." Accordingly, no timely demand for payment having been made, these lands became part of the Inyo National Forest, within whose boundaries they are situated.

It is clear that the Sisk Act was intended to provide a final 1-year opportunity to compensate persons claiming interests in base lands for which no lieu selections were completed, and that, after the opportunity expired, any unexercised rights would be cut off. As the Acting Secretary of the Interior noted in 1960:

> Fifty-four years have now passed since the last lands were relinquished under the 1897 act. The majority of the lands relinquished under that act have formed the basis for completed lieu selections. Some lieu selections, however, were not filed or for some reason were not carried to completion, but, nevertheless, the deeds conveying the private lands to the Government were executed and placed on the records. Some of the grantors took advantage of the 1922 act but others did not, and as a result there are scattered through the national forests in the Western States tracts of land to which the United States holds record title by reason of the old conveyances but for which parties may yet apply for reconveyance under the 1930 act. Some of these lands are now included in national parks which were created out of national forests. Some of these lands are of vital importance in the management of the national forests and the national parks. It is certainly true that parties with a right to demand a reconveyance of land have had a great deal of time in which to make application, more than 29 years by now since the last statute was passed. It would seem just and proper, therefore, that the essential interests of the Federal Government be protected by depriving parties of a further right

> to demand reconveyance. In this manner H.R. 9142 partakes of the nature of a statute of limitations, cutting off unexercised rights, but allowing an additional year within which compensation for those rights may be obtained. [Emphasis supplied.]

Letter from Ernst to Aspinall, supra at 2751. Thus, when appellant's predecessor in interest failed to exercise his right to compensation on or before July 6, 1961, any existing rights in the base lands were cut off.

[2] Section 315 of FLPMA, supra, provides appellant no basis for relief. The Sisk Act was not repealed by FLPMA; accordingly, its ban on reconveyances in these circumstances remains in effect. To hold otherwise would be to hold that the general grant of authority to issue disclaimers in FLPMA implicitly amended the specific prohibition on doing so that is explicitly stated in the Sisk Act.

Amendments or repeals by implication are not favored, and the legislature cannot be regarded as having changed a law unless the terms of the subsequent act are so inconsistent with the provisions of the prior law that they cannot stand together. Sutherland Stat. Const. § 22.13 (4th ed.) Such is not the case here, since FLPMA, the subsequent act, specifically limits the Secretary's authority to grant disclaimers to situations where a record interest of the United States has terminated or is invalid. The Sisk Act was intended to quiet title to those lands to the United States and cut off any competing interests. Thus, it was intended to validate title, and, since Congress has done nothing subsequently to alter this situation, the quieted interest of the United States has therefore not terminated and remains valid. By its own terms, FLPMA bars the issuance of a disclaimer here and is consistent with the earlier Sisk Act.

In any event, section 315(a) of FLPMA also provides that the Secretary must consult with any affected Federal agency prior to issuing a document of disclaimer. Here, the Forest Service expressed strong opposition to the issuance of a disclaimer. In view of this opposition, BLM's refusal to exercise the discretionary authority delegated by section 315(a) of FLPMA was proper.

[3] Appellant argues that BLM's denial of its request for a recordable disclaimer has the effect of depriving it of its property without just compensation. Congress expressly provided the mechanism for compensating those who were precluded from completing their lieu selections in section 1 of the Sisk Act. 3/ Apparently, appellant's predecessors in interest failed to avail themselves of this procedure within the 1-year time limit prescribed by Congress. The legislative history of the Sisk Act shows that Congress and the Department of Justice fully considered the constitutionality of this procedure. See Masonic I, supra at 27, 28. We are bound to follow its provisions.

3/ We make no finding on the question of whether appellant's predecessors in interest were "precluded" from completing their lieu selections, a prerequisite for relief under section 1 of the Sisk Act.

Appellant notes that C. E. Glover's title to the base lands was considered suspect in 1915, when the Commissioner of GLO rejected her lieu selection application. It argues that the Sisk Act does not apply in this case, since it only applies to valid lieu selection claims, and that Glover's (and her successors) lieu selection claim was not valid. Even if we could ignore the legislative history and accept the argument that the Sisk Act was not intended to quiet title to all lands deeded to the United States as lease parcels, appellant's argument is unpersuasive. Appellant calls upon the Department to allow a doubtful claim of title to prevail where it is clear beyond peradventure that a certain claim of title could not prevail--an unacceptable result at odds with the announced purposes of the Sisk Act. Appellant's apparent admission that its successor's title to this parcel was so doubtful as to require rejection of her lieu selection application in 1915 actually weakens its claim, since BLM certainly may not grant title to a parcel to an applicant who admits a defect in his successor's entitlement to the parcel.

Appellant notes that it has paid taxes on this property for many years. Even assuming that payment of taxes could create equity here, the applicable legislation allows no room to recognize any equitable interests in a parcel.

Since appellant's application was properly rejected as a matter of law, its request for an evidentiary hearing is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques
Administrative Judge

We concur:

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Bruce R. Harris
Administrative Judge

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Will A. Irwin
Administrative Judge